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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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|-----------------|-------------|----------------------|---------------------|

09/553,452 04/19/00 KOCH

E P3094

EXAMINER

ROCKEY MILNAMOW & KATZ LTD  
TWO PRUDENTIAL PLAZA  
47TH FLOOR  
CHICAGO IL 60601

PM82/0730

MARKOVICH, K  
ART UNIT PAPER NUMBER3671  
DATE MAILED:

07/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

|                              |                                       |                             |
|------------------------------|---------------------------------------|-----------------------------|
| <b>Office Action Summary</b> | Application No.<br><b>09/553,452</b>  | Applicant(s)<br><b>Koch</b> |
|                              | Examiner<br><b>Kristine Markovich</b> | Art Unit<br><b>3671</b>     |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1)  Responsive to communication(s) filed on May 14, 2001

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 835 C.D. 11; 453 O.G. 213.

#### Disposition of Claims

4)  Claim(s) 1-23 is/are pending in the applica

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from considera

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-23 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requiremen

#### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

15)  Notice of References Cited (PTO-892)

18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

19)  Notice of Informal Patent Application (PTO-152)

17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

20)  Other: \_\_\_\_\_

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***Response to Amendment***

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Herman et al. (US Patent 5,777,266).

Herman et al. discloses a temporary ramp for use on roadways (column 1, lines 15-16) having an elevated obstruction (figure 5). The ramp has adjacent ramp segments (10 adjacent 10, figure 5) with lower surfaces contacting the road and upper inclined surfaces (figure 1). Adjacent edge portions are removably coupled with male/female mating shapes which extend substantially the entire vertical height of the edge portions of the ramp segments (20, 56, figure 1; column 1, lines 58-59). The ramp is made of a rigid elastomeric material (column 1, lines 44-45). The means of use is not considered in this rejection since the claim is an apparatus claim.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 8, 11, and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herman et al. in view of McGinnis (US Patent 4,808,025).

Herman et al. discloses the claimed device except for a metal core, in the form of a fastener. McGinnis discloses that it is known in the art to provide a metal core in the form of a fastener (24, figure 4) in order to anchor the device and keep it from moving out of place once set. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the ramp of Herman et al. with the metal core/fastener of McGinnis, in order to anchor the device and keep it from moving out of place once set.

5. Claims 12, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herman et al. in view of Poe (US Patent 3,936,898).

Herman et al. discloses the claimed device except for a hinge mechanism. Poe discloses that it is known in the art to provide a hinge mechanism (15, figure 2) to allow a ramp to be portable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the ramp of Herman et al. with the hinge mechanism of Poe, in order to make the ramp a portable device.

6. Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herman et al. in view of Poe as applied to claim 12 above, and further in view of McGinnis.

The combination of paragraph 7 above discloses the claimed device except for a fastener. McGinnis discloses that it is known in the art to provide a fastener (24, figure 4) in order to anchor the device. It would have been obvious to one having ordinary skill in the art at

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the time the invention was made to provide the ramp of the combination of paragraph 7 above with the fastener of McGinnis, in order to anchor the device.

7. Claims 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herman et al. in view of McGinnis as applied to claims 16 and 17 above, and further in view of Poe.

The combination of paragraph 6 above discloses the claimed device except for a hinge mechanism. Poe discloses that it is known in the art to provide a hinge mechanism (15, figure 2) to allow a ramp to be portable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the ramp of the combination of paragraph 6 above with the hinge mechanism of Poe, in order to make the ramp a portable device.

8. Claims 1-7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner (US Patent 5,308,188) in view of Herman et al.

Shaftner discloses a temporary ramp for use on roadways having an elevated obstruction (figure 1). The ramp has a lower surface contacting the roadway and an upper inclined surface (figure 2). The ramp is made of an elastomeric material (column 2, lines 2-3 and column 3, lines 54-63).

Shaftner discloses the claimed device except for sectioning the device with male/female mating shapes. Herman et al. discloses that it is known in the art to provide the device with sections and mating shapes in order to make the device portable for temporary use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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provide the ramp of Shaftner with the sections of Herman et al., in order to make the device portable for temporary use.

9. Claims 8, 11, and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner in view of Herman et al. as applied to claim 1 above, and further in view of McGinnis.

The combination of paragraph 10 above discloses the claimed device except for a metal core, in the form of a fastener. McGinnis discloses that it is known in the art to provide a metal core in the form of a fastener (24, figure 4) in order to anchor the device and keep it from moving out of place once set. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the combination of paragraph 10 above with the metal core/fastener of McGinnis, in order to anchor the device and keep it from moving out of place once set.

10. Claims 12, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner in view of Herman et al. as applied to claims 1, 5, and 7 above, and further in view of Poe.

The combination of paragraph 10 above discloses the claimed device except for a hinge mechanism. Poe discloses that it is known in the art to provide a hinge mechanism (15, figure 2) to allow a ramp to be portable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the combination of paragraph 10 above with the hinge mechanism of Poe, in order to make the ramp a portable device.

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11. Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner in view of Herman et al. and Poe as applied to claim 12 above, and further in view of McGinnis.

The combination of paragraph 12 above discloses the claimed device except for a fastener. McGinnis discloses that it is known in the art to provide a fastener (24, figure 4) in order to anchor the device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the ramp of the combination of paragraph 12 above with the fastener of McGinnis, in order to anchor the device.

12. Claims 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner in view of Herman et al. and McGinnis as applied to claims 16 and 17 above, and further in view of Poe.

The combination of paragraph 11 above discloses the claimed device except for a hinge mechanism. Poe discloses that it is known in the art to provide a hinge mechanism (15, figure 2) to allow a ramp to be portable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the ramp of the combination of paragraph 11 above with the hinge mechanism of Poe, in order to make the ramp a portable device.

#### ***Response to Arguments***

13. Applicant's arguments filed May 14, 2001 have been fully considered but they are not persuasive.

Applicant states that Herman et al. is "made of a rigid elastomeric material and makes the elevated obstruction part of the cable protection system." Applicant further states that "There are no vertical obstructions to be protected such as in roadways with sewers as in applicant's

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invention." With respect to the claim language presented by applicant, the Herman et al. reference meets all of the limitations of applicant's invention. Column 2, lines 50-54 of Herman et al. states that "The entire cable protective arrangement, and all of the elements ... may be molded of a rigid high-strength plastic material able to withstand repeated loadings and stresses." In review of applicant's claims, the only limitation made is that the material be "elastomeric", therefore, the specific rigidity or "brittleness" of the material is not in question. Regarding the argument that the cables of Herman et al. are not obstructions, examiner disagrees. Noting the language of claim 1, "said first and second ramp segments being positioned adjacent the elevated obstruction", the cables of Herman et al. have a height and are considered the "elevated obstruction". Additionally, the definition 1 of "adjacent" is given as "close to or lying near" (Microsoft Bookshelf Basics Dictionary). Therefore the apparatus of Herman et al. clearly meets the limitations stated by applicant. Additionally, applicant does not claim the specific obstruction to be a manhole or sewer.

In response to applicant's arguments to the rejection of claims 8, 11, and 13-18 (Herman et al. in view of McGinnis) examiner does not agree that "It would seem illogical to add the fasteners of McGinnis in as much that there is no necessity to anchor the cable protection system of Herman". A protective system would only function best if able to be held securely in place. Additionally, applicant states that "no suggestion is made in Herman to protect a protruding object from the roadway or even from a sidewalk, disclosed or remotely proposed in Herman". This is indeed not the case. Column 5, lines 17-19 state that "As illustrated in figure 5 of the drawings, when it [the protection system] is adapted to protect a wider walkway or site road or roadway, it is merely necessary to attach, for example, two modular cable protectors..."

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In regards to applicants argument to the rejection of claims 12, 21, and 22 (Herman in view of Poe) which states that "[Poe] shows no method of surrounding an obstacle to protect it and objects striking it from damage" examiner disagrees. As stated previously, the means of use is not considered in this rejection since the claim is an apparatus claim. Regardless, the device of Poe clearly functions as suggested by applicant based on the structure of the invention when placed in it's functioning position.

Applicant's argument to the rejection of claim 19 (Herman in view of Poe, further McGinnis) examiner again points toward the definition of the limitation "adjacent to" in the claim language.

Applicant states in response to the rejection of claims 20 and 23 (Shaftner in view of Herman et al. And McGinnis as applied to claims 16 and 17 and further in view of Poe) that "There is no one who would consider that applying the hinge mechanism of Poe to a device similar to that of McGinnis which is not separable and without ramps." Examiner has modified the base reference to incorporate the hinge mechanism such that it can be made portable. Examiner contends that it is not beyond the teachings of Poe to make a ramp apparatus (Shaftner) portable and thus "folding with a hinge" and apply this teaching to Shaftner in view of Herman et al. And McGinnis. It has commonly been held that making an old device portable or movable without producing any unexpected result involves only routine skill in the art.

### **Conclusion**

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristine M. Markovich whose telephone number is (703) 305-1676. The examiner can normally be reached on Mon-Fri from 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3780. The fax phone number for this Group is (703)305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



Thomas E. Will  
Supervisory Patent Examiner  
Group 3600

KMM  
KMM  
July 30, 2001